

THE HON'BLE SRI JUSTICE K.C. BHANU

W.P.No.6353 of 2004

Date:03-08-2005

Between:

Gandhi Ranga Rao S/o Sri China Rangaiah

Aged 41 years, 24-461, chamandivari Thota,

Moolapeta, Nellore.

Petitioner

And

The Deputy General Manager, State Bank of India,

Personel & HRD Section, Zonal Officer, Tirupati and another.

Respondents

THE HON'BLE SRI JUSTICE K.C. BHANU

W.P.No.6353 of 2004

ORDER:

Challenging the order passed by the first respondent dated 30-01-2004 in proceedings No.Per&HRD/s-2699 confirming the orders of the second respondent dated 16-07-2003 as illegal and arbitrary and consequently to direct the respondents to forthwith reinstate the petitioner into service with all consequential benefits, the present writ petition is filed.

The `brief facts that are necessary for the disposal of the present writ petition may be stated as follows:

The petitioner was appointed as a Clerk-cum-Cashier in the second respondent-Bank at Duvvur branch in Kadapa District. Thereafter, he was transferred to Chitvel Branch, Kadapa District, on administrative grounds. While so, for certain irregularities said to have been committed by the petitioner, a suspension order dated 01-02-2001 was served on him. A show cause notice dated 03-10-2001 was also served on him by the second respondent alleging some charges, for which the petitioner submitted his explanation on 27-10-2001. As the explanation was not satisfactory, the second respondent appointed an enquiry officer for conducting enquiry, as such the enquiry officer conducted the enquiry and submitted his report dated 05-03-2003. However, the second respondent by proceedings dated 07-04-2003 informed that he was differing with the findings of the enquiry officer and held that all the charges are proved. After affording an opportunity of personal hearing to the petitioner, he was dismissed from service by the order dated 16-07-2003. Against the order of

dismissal, the petitioner filed an appeal on 18-09-2003 before the first respondent and the same was dismissed confirming the orders of the second respondent. Aggrieved by the same, the present writ petition is filed.

The learned counsel appearing for the petitioner contended that the enquiry officer found the petitioner not guilty of some charges and without giving an opportunity, the disciplinary authority differed with the findings of the enquiry officer; that the findings are not based upon any evidence, because the original documents, on which the department relied upon, are not filed, but the xerox copies are only filed, and therefore, he prays to set aside the impugned order. He also relied on some decisions to substantiate his contentions.

On the other hand, the learned Standing counsel appearing for the respondents contended that after giving a reasonable opportunity to the petitioner, a regular departmental enquiry was conducted and the disciplinary authority having differed with some of the findings of the enquiry officer, gave reasons for its conclusion; that after giving a personal hearing to the petitioner, the impugned order has been passed; that since it is a case misappropriation of amounts relating to the customers, major punishment of dismissal has been ordered, and therefore, the order under challenge does not suffer from any incurable legal infirmities so as to call for interference by this Court.

For certain irregularities said to have been committed by the petitioner, he was placed under suspension by the proceedings dated 01-02-2001. Thereafter, a show cause notice dated 03-10-2001 was served on the petitioner, for which he gave a detailed explanation on 27-10-2001. The second respondent appointed an enquiry officer on 21-11-2001, as

the explanation was not satisfactory. Thereafter, a regular departmental enquiry was conducted against the writ petitioner. Some witnesses were examined and some

copies of documents, on which the department relied upon, were marked. The enquiry officer found that two charges have been proved and observed with regard to two other charges. Differing with the charges, which are not proved, the disciplinary authority gave a show cause notice to the petitioner giving reasons for differing with the findings of the enquiry officer and that after affording personal hearing, the impugned order has been passed.

An appeal has been filed before the first respondent and the same was dismissed.

The law is well settled that the Court should not interfere with the administrators' decision, unless it was illogical or

suffers from procedural impropriety or was shocking to the consciousness of the Court in the sense that it was in defiance of logic or moral standard. It is also equally well settled that when the punishment is disproportionate to the proved misconduct, then also the Court can interfere with the findings of the disciplinary authority. It is not for this Court to re-appreciate the entire evidence by sitting over in appeal against an order, but at the same time, to test whether the findings are based upon the evidence or not, it is required to notice that two witnesses were examined who identified the signature of the writ petitioner in the documents. The contention, that those documents have not been sent to the expert, cannot be a ground to take a different view basing on the evidence available on record. If it is a case of no evidence at all, then certainly, the findings are said to be perverse. But, if the findings are based upon some evidence on record, by appreciating the evidence, the same cannot be interfered with.

With regard to charge No.1 (A), the petitioner received cash from Savings Bank depositors and made entries in the pass book/ledger concerned without accounting for the money received from the customers in the branch books. The said charge held to be not proved by the enquiry officer. But, the disciplinary authority dissatisfied and differed with the findings of the enquiry officer and came to the

conclusion that the entry in the S.B. Account was initialed by the petitioner only, as per the evidence of PW-1. The enquiry officer gave a finding that the depositors did not attend the enquiry and therefore, the charge is not proved. The disciplinary authority is right in coming to the conclusion that the charge has been proved in view of the fact that the initial of the writ petitioner has been identified by PW-1. Therefore, the said finding of fact cannot be said to be perverse or contrary to the evidence on record.

With regard to charge No.2, the enquiry officer himself gave a finding that it has been proved. The findings are based upon the evidence of PWs.1 and 2 and also upon some relevant documents i.e., ledgers. Therefore, the said findings cannot be said to be perverse or contrary to law.

With regard to charge No.3, though the enquiry officer found not guilty, but the disciplinary authority, after giving a cogent reasons, differed with the enquiry officer's report.

With regard to charge No.4, in respect of mis-utilization of an amount of Rs.2,500/-, the charge is also based upon some evidence as seen from the enquiry report. Therefore, from the perusal of the enquiry report, it would clearly go to show that the procedure in conducting the enquiry has been followed and the principles of natural justice have been complied with. The petitioner was allowed to defend his case through a person of his choice. He was given right to cross-examine the witnesses.

The learned counsel for the petitioner placed strong reliance on the decision reported in **AJIT JAIN v. NATIONAL INSURANCE CO. LTD** , wherein it was held:

“the Court would be in a position to set aside the order of dismissal and direct that the inquiry proceeding be relegated to the stage where the infirmity had crept in.”

But, no such infirmity has been pointed out in this case except that the documents

have not been sent to the expert. PWs.1 and 2 are acquainted with the handwriting of the petitioner, and therefore, they are the persons, who can identify the initials of the petitioner.

The learned counsel also relied upon a decision reported in **AHMED MOHIUDDIN v. STATE BANK OF INDIA** , wherein this Court held:

"When the enquiry officer found that certain charges are not proved, the disciplinary authority imposed punishment without intimating delinquent reasons for such disagreement."

But, in this case, the disciplinary authority gave reasons for disagreeing with some of the findings of the enquiry officer and personal hearing was also afforded to the writ petitioner. Therefore, the said decision relied upon by the learned counsel lends no support to his contentions.

He also relied upon another decision reported in **PUNJAB NATIONAL BANK v. KUNJ BEHARI MISRA** , wherein it was held:

"The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

There is no dispute about the above provision of law. When the disciplinary authority is differing with the findings of the enquiry officer, the delinquent official shall be

given an opportunity to persuade the disciplinary authority to expect the favourable conclusion and that is the reason why the petitioner was given personal hearing by virtue of the proceedings, dated 07-04-2003. The said proceedings also contain the reasons for differing with the findings of the enquiry officer. Therefore, there is no deviation from the procedure or the law laid down by the Apex Court.

The petitioner being an officer of the bank, he is expected to maintain absolute integrity and honesty. The trust created on the petitioner cannot be mis-utilized by him. One of the charges levelled against him is that having received cash from the savings bank depositors, the same has not been accounted in the ledgers of the bank in the branch books and made spurious entries in the demand loan ledgers without accounting for the same in the branch books. It is also alleged that he mis-utilized certain amounts belonging to one of the customers of the bank.

So, all these circumstances go to show that the petitioner had misappropriated the amounts of the customers of the bank. Such a conduct on the part of the petitioner deserves to be imposed a major penalty. Under no stretch of imagination, it can be said that the punishment is proportionate and in commensurate with the proved misconduct. There are absolutely no grounds to interfere with the impugned proceedings.

The writ petition is totally devoid of merits and the same is accordingly dismissed. No order as to costs.

K.C.BHANU, J

Dated August 03, 2005.

